



The Secretary of Energy

Washington, DC 20585

July 14, 1999

MEMORANDUM TO: HEADS OF DEPARTMENTAL ELEMENTS AND
CONTRACTOR ORGANIZATIONS

FROM: BILL RICHARDSON /s/
SECRETARY OF ENERGY

SUBJECT: UNCLASSIFIED FOREIGN VISITS AND ASSIGNMENTS

Today, I approved the attached directives formally implementing changes to the DOE policy and procedures for unclassified visits and assignments by foreign nationals to our facilities.

These changes incorporate recommendations included in Presidential Decision Directive 61 and the recent Counterintelligence Implementation Plan, and are part of the ongoing reforms the Department is making to our national security procedures. I have previously directed many of these changes at our most sensitive facilities. These directives formalize the changes, provides additional clarification, and extends their applicability to other facilities. Key changes include:

- Rescinding the previous directive (DOE 1240.2B) and all exemptions and waivers to that directive.
- Establishing the authority of the Secretary of Energy as the single official to grant exemptions and waivers, and to approve visits and assignments by foreign nationals from countries identified by the State Department as terrorist nations.
- Delegating approval authority and accountability for foreign visits and assignments to the DOE or DOE contractor site managers.
- Requiring the involvement of local counterintelligence, security, and export control officials in the approval process
- Clarifying information collection and reporting requirements.

Implementing these changes are important to the security reforms we are making and I expect your immediate attention to these directives. Authority for exclusions or modifications to these requirements is my responsibility, and attached to this memo is the list of those laboratories, that, due to the nature of their activities, are currently exempt. Information and copies of the lists of sensitive countries and sensitive subjects referred to in the directives, are available from the Nuclear Transfer and Supplier Policy Division, NN-43, Telephone (202) 586-2331, FAX (202) 586-1348.

I expect there to be additional changes and improvement to these directives. These changes will result from current activities involving the establishment of the new Office of Security and Emergency Operations and changes being made in the information reporting system to make it fully support our reporting and tracking needs. I expect all affected offices to be fully involved in developing these changes.

I do want to take this opportunity to clarify an important point. While U.S. national security is a top priority, I am also concerned that Asian Pacific Americans as a group are finding their loyalty and patriotism questioned in the wake of recent espionage allegations. This behavior is unacceptable and will not be tolerated. These new requirements make it clear that “foreign nationals” does not include any U.S. citizen regardless of their heritage.

Attachments

July 14, 1999

Attachment -- List of DOE facilities exempt from the requirements of DOE N 142.1

The Secretary of Energy has determined that the requirements of DOE N 142.1 do not apply to the following facilities because these facilities do not perform classified work. However, the requirements of DOE N 142.1 do apply to visits and assignments hosted by individuals holding security clearances at these facilities.

Ames Laboratory

Fermi National Accelerator Facility

Lawrence Berkeley National Laboratory

National Renewable Energy Laboratory

Princeton Plasma Physics Laboratory

Stanford Linear Accelerator Facility

Thomas Jefferson National Accelerator Laboratory

U.S. Department of Energy
Washington, D.C.

NOTICE

DOE N 142.1

Approved: 7-14-99

SUBJECT: UNCLASSIFIED FOREIGN VISITS AND ASSIGNMENTS

1. PURPOSE. To provide interim Department of Energy (DOE) requirements and responsibilities for unclassified visits and assignment by foreign nationals to DOE facilities for unclassified activities. This Notice supplements DOE P 142.1 dated 7-14-99, which sets overall Departmental policy on unclassified foreign visits and assignments. It is a complement to existing counterintelligence and security orders and policies.
2. CANCELLATION. DOE 1240.2B, UNCLASSIFIED VISITS AND ASSIGNMENTS BY FOREIGN NATIONALS, of 8-21-92; including all exemptions and waivers to that Order.
3. APPLICABILITY. This Notice applies to all Departmental Elements and contractor organizations that receive unclassified visits and assignments of foreign nationals except those facilities designated by the Secretary, and to all DOE funded activities. This notice does not apply to visits or activities that are open to the public. Exclusions or modifications to the requirements of this Notice must be approved by the Secretary of Energy or designee.
4. REQUIREMENTS.
 - a. All unclassified visits (30 days or less) and assignments (more than 30 days) of foreign nationals will be managed consistent with DOE and national security policy and requirements.
 - b. All DOE organizations that sponsor unclassified foreign national visits and assignments will maintain a reporting and recordkeeping system consistent with the requirements of this Notice. The reporting system will be an integral part of the approval process and reporting information will be provided to DOE Headquarters to support the Departmental information needs. At a minimum, the following information on each foreign visitor and assignees will be reported:
 - Biographical and personal information including date and place of birth and permanent address, and place/nature of employment.
 - Passport, visa, and Immigration and Naturalization Service information.
 - Purpose for the visit or assignment including detailed information on the research to be performed.
 - Actual dates, subjects, and areas to be visited and those areas actually visited.

Distribution:
All Departmental Elements

Initiated By:
Office of the Secretary

- Need for an export license.
- Information related to required indices checks.
- Information related to the appropriate security plan (generic or specific).
- Identity of the host of the visit or assignment
- Identity of the sponsoring organization of the visit or assignment.

Additional information will be required for all visits or assignments that require access to a security area by a foreign national, access to a sensitive subject by a foreign national, or access to any DOE facility or site by a foreign national from a sensitive country. This additional information must clearly indicate the results of coordination with counterintelligence, foreign intelligence, export control, and security organizations. Counterintelligence organizations will maintain the responsibility for indices checks, export control organizations will maintain responsibility for sensitive subject reviews and transfer authorization, and security organizations will ensure development of plans for the protection of security interests. The additional information will be provided to DOE Headquarters to support Departmental information needs.

- c. Approval authority, with the exception noted below, for all unclassified foreign visits and assignments at DOE field and contractor sites (including DOE laboratories) will be delegated to the site manager/laboratory director. Approval authority for unclassified visits and assignments at DOE Headquarters will be assigned to the Secretarial Officer from the sponsoring organization. Approving officials will be accountable for all approval decisions and for implementing an approval process in conformance with this Notice. Each DOE and DOE contractor organization must have an approval process which includes appropriate input from officials with responsibility for counterintelligence, security, export control, and technology transfer. These processes must address requirements for indices checks and security plans, if required, and will provide for follow-up contact by facility counterintelligence officials. These processes will also assure (1), that instances of close and continuing contact (including email contact) with foreign visitors and assignees from sensitive countries both on or off DOE sites are referred to the facility counterintelligence officials and (2), compliance with the Export Control Guidelines established by the Office on Non-proliferation and National Security. All visits and assignments by foreign nationals from countries on the list of State sponsors of terrorism maintained by the Department of State are to be approved by the Secretary.
- d. Indices checks are required for all visits and assignments of foreign nationals that are citizens of, or are employed by a government or institution of, a sensitive country, and all visits and assignments of foreign nationals involving security areas or sensitive subjects. Indices checks will be completed by the Office of Counterintelligence.

Indices checks will not be required for visits to designated DOE officials by foreign national diplomats and other foreign national senior government officials for the primary purpose of high-level policy dialogue. The Secretary will designate these DOE officials.

- e. A minimum of 30 days advance notice will be required for indices checks on visitors and assignees as required in paragraph d. The results of indices checks will be used in the review and approval process by the host organization.
- f. Indices checks must be completed prior to the visit or assignment. When circumstances do not allow for timely submission or completion of an indices check, the approving official must consult with the appropriate counterintelligence official prior to making an approval decision.
- g. Security plans are required for all unclassified foreign visits and assignments to security areas. Specific security plans tailored for individual foreign visits or assignments shall be developed and approved by the site manager/laboratory director for all visits or assignments that require access to a security area, access to a sensitive subject, or access to any DOE facility or site by a foreign national from a sensitive country. When access to a security area or a sensitive subject is not required, generic security plans will be developed. Generic security plans shall ensure that security interests and sensitive information and technologies are not placed at risk as a result of hosting foreign visitors and assignees. Security plans shall be reviewed by the cognizant DOE Field or Headquarters security organization (depending on where the visitor or assignee is going) and approved by the unclassified foreign visits and assignments approval authority prior to the commencement of the visit or assignment.
- h. The Office of Nonproliferation and National Security will maintain and distribute a current list of Sensitive Countries which will be updated annually based on input from the appropriate DOE organizations. This list may be supplemented by the Secretary of Energy, to include additional countries posing significant national economic security concerns. Approving officials are responsible for managing approvals according to the current list.
- i. The Office of Nonproliferation and National Security will maintain and distribute a current list of Sensitive Subjects. This list will be reviewed at least every six months based on input from appropriate DOE organizations. DOE facilities may append lists of their own comprising proprietary information. These lists shall be developed with input from facility officials with responsibility for counterintelligence, export control, foreign intelligence, and national security; and are to be submitted to The Office of Nonproliferation and National Security and the Office of Counterintelligence.

- j. The Office of Foreign Visits and Assignments Policy, in coordination with the Office of Counterintelligence, will manage a central tracking system for visits and assignments to DOE facilities and establish required reporting formats.
- k. Line management is responsible for implementation of the unclassified foreign visits and assignments process. Program reviews shall be conducted periodically by the Office of Foreign Visits and Assignments Policy and the Office of Counterintelligence to assess policy effectiveness and identify improvement areas. Independent oversight of the overall performance of the Foreign Visits and Assignments Program is the responsibility of the Office of Independent Oversight and Performance Assurance

5. DEFINITIONS.

Assignment. Presence, including employment, of an invited foreign national at a DOE facility for more than 30 calendar days. Assignments are normally for the purpose of participating in the work of the facility, gaining experience, or contributing to projects.

Close and Continuing Contact. Close and continuing contact with a foreign national is defined as a relationship that (a) involves bonds of affection and/or personal obligation, and/or (b) where the employee and foreign national share private time together in a public or private setting where sensitive professional and personal information is discussed or is the target of discussion. This includes contact regardless of location (on or off-site), but does not include incidental contact. Questions concerning this term and the required reporting obligations should be directed to the appropriate counterintelligence officials.

Economic Security. Concerns protection of U.S. proprietary economic or trade secret information from theft by any foreign power (see Economic Espionage Act of 1996).

Export Controlled Information (ECI). Certain unclassified Government information under DOE's cognizance which requires a specific license or authorization for export under United States laws or regulations and which unrestricted dissemination could reasonably be expected to adversely affect United States national security and nonproliferation objectives.

Foreign National. For the purposes of this Notice, a foreign national is any person who is not a U.S. citizen, and includes permanent resident aliens. Foreign nationals sponsored for visits or assignments may include, among others:

- (1) Officials or other persons employed by foreign governments or other foreign institutions, who may or may not be involved in cooperation under international agreements;
- (2) Foreign students at U.S. institutions;
- (3) Employees of DOE or other U.S. Government agencies or their contractors, of universities, of companies (professional or service staff), or of other institutions; and
- (4) Prospective employees of DOE or DOE contractors.

Host. A DOE or DOE contractor employee who is sponsoring a visitor or assignee as described in the Notice. A visitor or assignee cannot be a host unless he or she is an employee of DOE or a DOE contractor. A sensitive country foreign national can not be a host of another sensitive country foreign national. The host is directly responsible for ensuring adherence to the requirements of this notice.

Indices Check. A procedure whereby a request is made to appropriate U.S. Government agencies to determine whether information exists on a particular foreign national.

International Agreement. An agreement between the United States or an entity thereof, and a foreign country or an entity thereof, or an international organization or an entity thereof, to cooperate in an endeavor of common interest. Included are agreements of specific types, such as umbrella agreements, project agreements, implementing agreements, cooperative agreements, protocols, memoranda of understanding, and contracts providing for cooperative endeavors.

Proprietary Information. Information which contains trade secrets or commercial or financial information which is privileged or confidential, and may only include such information which:

- (1) Has been held in confidence by its owner;
- (2) Is of a type which is customarily held in confidence by its owner;
- (3) Has not been transmitted by the transmitting party to other entities (including the receiving party) except on the basis that it be held in confidence; and
- (4) Is not otherwise available to the receiving party from another source without restriction on its further dissemination.

Security Area. A specific physically bounded area, individually certified by the cognizant security officer, which has been approved by the Department for generating, receiving, using, processing, storing, reproducing, transmitting, destroying, or handling special nuclear material or classified matter. A security facility temporarily sanitized to protect a security interest during a visit or assignment continues to be a security facility for the purposes of this Notice.

Security Plan. A plan developed and implemented to protect DOE and DOE contractor assets and to prevent the compromise of a DOE security interest or sensitive subject to a foreign visitor or assignee. All sites and facilities hosting unclassified foreign visits and assignments are responsible for developing and approving a generic security plan that identifies general restrictions on access by all foreign visitors and assignees. Sites and facilities hosting unclassified foreign visits and assignments involving access to a security facility, access to a sensitive subject, or access to any DOE facility or site by a foreign national from a sensitive country shall develop a security plan specific to the individual visit. The specific security plan shall impose specific access restrictions and security countermeasures to ensure effective protection of DOE assets. The security plan will be approved by the approval authority for the unclassified foreign visit or assignment. The effectiveness of the security plan will serve as a critical decision element regarding approval actions. The security plan must provide sufficient detail to support the approval authority in the decision making process.

Sensitive Country. A country to which particular consideration is given for policy reasons during the DOE internal review and approval process of visits and assignments by foreign nationals. Countries may appear on this list for reasons of national security, nuclear nonproliferation, regional instability, threat to national economic security, or terrorism support. For purposes of this Order, a foreign national is considered to be from a sensitive country if a citizen of, or employed by, a government or institution of a sensitive country. The list of sensitive countries, derived from existing Government sources, will be maintained by Office of Nonproliferation and National Security.

Sensitive Subject. Unclassified subject/topics identified in existing Federal regulations governing export control as well as those identified by DOE as unique to its work, which involves information, activities, and/or technologies that are relevant to national security. Disclosure of sensitive subjects has the potential for enhancing weapons of mass destruction capability, leading to weapons of mass destruction proliferation, divulging militarily critical technologies, or revealing other advanced technologies which may adversely affect U.S. national economic security. Therefore, they require special management oversight, especially prior to release to foreign nationals. The list of sensitive subjects will be maintained by the Office of Nonproliferation and National Security.

Technology. Also referred to as technical data, technical skills or know-how, or as scientific and technical information. Technology is derived from basic or applied research, development, engineering, technological demonstration, economic and social research, or scientific inquiry into phenomena or technology applications. It may exist as machinery or equipment; it may be recorded, spoken, or represented in a medium for storage of communication, and may be contained in computer software with scientific and technical applications.

U.S. Citizen. A citizen of the United States, including naturalized citizens.

Visit. Presence of a foreign national at a DOE facility for 30 calendar days or less. Visits which total over 30 calendar days in a period of 12 months are defined as assignments. Visits are normally for the purpose of technical discussions, orientation, observation of projects or equipment, training, contract service work, or discussion of collaboration on topics of mutual interest without participation in the work of the facility, or for courtesy purposes. The term "visit" includes officially-sponsored attendance at a DOE event off-site from a DOE facility, but does not include on, or off-site events and activities open to the general public. Off-site events, that do not include participation by DOE or DOE contractor personnel that work in areas of national security and nonproliferation, or have knowledge in subjects of interest to foreign nationals that may attempt to compromise national security may be exempted from the provisions of this notice by the approving official from the host organization.



BILL RICHARDSON
Secretary of Energy